

SUPREME COURT OF THE UNITED STATES

ALEXZENE HAMILTON v. TEXAS

**ON PETITION FOR WRIT OF CERTIORARI TO THE COURT
OF CRIMINAL APPEALS OF TEXAS**

No. 89-7838. Decided October 9, 1990

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins,
concurring.

This petition for a writ of certiorari raises important, recurring questions of law that should be decided by this Court. These questions concern the standards that the Due Process Clause of the Fourteenth Amendment mandates in a hearing to determine whether a death row inmate is competent to waive his constitutional right to challenge his conviction and sentence and whether he has made a knowing and intelligent waiver of this right.

James Edward Smith was convicted of murder and sentenced to death in Harris County, Texas, in 1984. Smith had a substantial history of mental illness, and his mental difficulties prompted a finding by the Texas trial court that he was not competent to represent himself on appeal. Pet. for Cert., Exh. 2, p. 13, Exhs. 4-8, 10-12. After his conviction, Smith vacillated between forceful insistence on prosecuting his own appeal and equally forceful insistence on abandoning any challenge to his conviction or his sentence. Pet. for Cert., Exh. 2, pp. 10-11, Exh. 11, p. 2.

Petitioner is Smith's natural mother. Proceeding as Smith's "next friend," she attempted to establish her standing to litigate on her son's behalf and to have his execution stayed until his competence was established after a full adversarial hearing. She was unsuccessful. On May 23, 1990, without notice to petitioner, the Texas trial court held a nonadversarial hearing, made a finding that Smith was com-

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petent to make a decision regarding his execution, and set his execution for 12:01 A. M. on June 26, 1990. Pet. for Cert., Exh. 3.

On June 22, over the dissent of Justice Teague,¹ the Texas Court of Criminal Appeals dismissed petitioner's "Emergency Application for Stay of Execution and Objections to Trial Court's Prior Proceedings." *Ex Parte Hamilton*, No. 18,380-02 (Tex. Crim. App., June 22, 1990) (en banc) (*per curiam*) (order denying application for stay). On June 24, petitioner filed in this Court her petition for a writ of certiorari and her application for a stay of Smith's execution. Four Members of the Court voted to grant certiorari,² and to stay the execution. Nevertheless, the stay application was denied, and Smith was executed on schedule.

Smith's execution obviously mooted this case. The Court has therefore properly denied the petition for a writ of certiorari. This denial, however, does not evidence any lack of merit in the petition;³ instead, the reason for the denial em-

¹"Teague, J., notwithstanding that such might, but probably only will cause a slight delay in carrying out applicant's obvious desire to carry into effect his long held death wish, as well as his strong belief that he will be reincarnated after he is killed, but believing that this Court, at least implicitly, has ruled that in a case such as this one, where the reasonable probability that the defendant is not competent to request that he be put to a premature death, or, to put it another way, to commit legal suicide through the hands of others, has been raised, it is necessary for the trial court to conduct a 'full adversarial hearing' on the issue. Given the possible favorable evidence now available, a 'full adversarial hearing' should now be conducted in this cause. See *Ex parte Jordan*, 758 S. W. 2d 250 (Tex. Cr. App. 1988). Also see *Ford v. Wainwright*, 477 U. S. 399, 106 S. Ct. 2595, 92 L. Ed. 2d 335 (1986)." *Ex Parte Hamilton*, No. 18,380-02 (Tex. Crim. App., June 22, 1990) (Teague, J., dissenting from order denying application for stay).

²See *Hamilton v. Texas*, 497 U. S. — (1990) (Brennan, J., dissenting from denial of application for stay).

³See *Singleton v. Commissioner*, 439 U. S. 940, 942 (1978) (opinion of STEVENS, J., respecting denial of petition for writ of certiorari).

phasizes the importance of confronting on the merits the substantial questions that were raised in this case.

JUSTICE SOUTER took no part in the consideration or decision of this motion and this petition.